available. This insurance can be issued either with or without premiums, the latter being the case when the operation is being conducted pursuant to a contract between the air carrier and the Departments of Defense or State.

In the event premiums are collected from the particular air carriers involved, they are placed in a revolving fund which would be used if the Government is subsequently required to pay out on a policy. The aviation war risk insurance revolving fund now has a balance of $22.6 million and is now in a position where it could absorb a substantial claim if it were required to do so. The revolving fund is also used to pay administrative expenses associated with operating this important program, such as employee salaries.

Although the very nature of the program is such that it is infrequently used, I believe it is important that the authority be in place should it become necessary to assure the continuation of essential air transport operations outside the United States.

As my colleagues are aware, the aviation war risk insurance program has been extended by the Congress on numerous occasions in the past, and most of those extensions were for 5-year periods as provided for in H.R. 5930.

The last time we examined this program was in 1977 where we also made other changes to the statute which were designed to fill potential gaps in the Secretary's authority to issue this insurance. Those amendments accomplished their intended purpose and the administration, as well as the U.S. air carriers, believe that a simple extension of the program is all that is necessary at this time.

Accordingly, I would urge my colleagues to support H.R. 5930 so we can assure that this important program will continue in the years ahead.

● Mr. SNYDER. Mr. Speaker, as the chairman of the Aviation Subcommittee has indicated, today we are considering legislation (H.R. 5930) to extend the aviation war risk insurance program for 5 years through the end of fiscal year 1987. Because of the importance of assuring that vital air transport operations can continue in the face of instability abroad, I would urge my colleagues to support H.R. 5930.

Actually, the name "war risk" is somewhat of a misnomer since the statute no longer specifies the types of risks which are eligible for Government insurance. The last time the Congress extended this program, back in 1977, we determined that the Secretary of Transportation would have greater flexibility if eligibility for Government insurance depended, in part, on a Presidential determination that the particular operation was in the foreign policy interests of the United States.

Accordingly, such insurance can be issued to cover a variety of risks; that is, civil disturbances, terrorist activities, provided it is an operation outside the United States and the President determines it is appropriate. Of course, it can only be issued where commercial insurance cannot be obtained at reasonable rates and conditions.

The program contemplates two different types of insurance—premium and nonpremium. If the above conditions are met, the premium program generally applies. However, if the operation is being conducted pursuant to a contract which the carrier has with the Departments of Defense or State, no premiums are charged to the carriers although DOD or the State Department must indemnify the Secretary for any payouts which occur on the policy An example of this is the operation of the Civil Reserve Air Fleet (CRAF). In the event CRAF aircraft are needed by our Government, the nonpremium program permits the operation to be insured and therefore protects the carrier from any losses which may arise.

Although the Government war risk insurance is issued only on rare occasions, I believe that it is necessary to extend the current authorization so that the lack of commercially available insurance will not deter this country from conducting operations which are determined by the President to be in our best interests.

Accordingly, I would urge my colleagues to adopt H.R. 5930 so we can extend this important program before it expires at the end of the current fiscal year.●

● Mr. HOWARD. Mr. Speaker, I rise in support of this legislation to reauthorize, through fiscal year 1987, the aviation insurance program, commonly referred to as the war risk insurance program.

Although this program is not well known, it is one that is very important to the implementation of our Nation's foreign policy.

Under this program, the Federal Aviation Administration provides insurance to U.S. airlines for air service to foreign countries when commercial insurance cannot be obtained on reasonable terms and conditions, and when the President determines that the continuation of air service is necessary to carry out the foreign policy of the United States.

Though this program has not been called upon since the last time it was authorized 5 years ago, it does not take one long to conceive of instances in the world today where a government insurance program for service to high risk areas would be necessary.

Mr. Speaker, I urge the House to pass this bill. Our Nation's foreign policy interests will be well served by it.●

Mr. MINETA. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. CLAUSEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. MINETA) that the House suspend the rules and pass the bill, H.R. 5930.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CLAUSEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

CONFERENCE REPORT ON H.R. 4, INTELLIGENCE IDENTITIES PROTECTION ACT

Mr. BOLAND. Mr. Speaker, I call up the conference report on the bill (H.R. 4) to amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain U.S. intelligence officers, agents, informants, and sources.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of May 20, 1982.)

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. BOLAND) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. MCCLORY) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Massachusetts (Mr. BOLAND).

Mr. BOLAND. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the conference report which we take up today was the subject of many long and hard discussions and eventually of compromise. It might not have appeared on the surface that there were many substantial differences between the two Houses. But from the beginning, it was, in the opinion of this Member, important to create a legislative history in the statement of managers that explains the crucial section of this legislation—section 601(c). It was important, because in the House, there was not a report which explained the effect of the Ashbrook amendment, the language of 601(c). In the other body as well, there was no committee report explaining the language of 601(c), which had also been offered as a floor amendment, in this case by Senator CHAFEE. Further, it was important that the differences between the two Houses on the question of protecting cover for U.S. intelligence officers and agents be resolved in light of the need to better protect such individuals and in order to guar-

antee that cover is sufficient to justify the criminalization of its disclosure.

The House should also know that I began the process of discussions about these issues in some doubt about the constitutionality of the bill. Nonetheless, I felt it was my duty to bring back a bill to the House because it was the will of this body that H.R. 4 become law. I also thought it was my duty—and I believe all the conferees join me in this—to provide a bill which could meet constitutional muster, that was as narrowly prescribed in its coverage as was necessary to criminalize the wholesale exposure of intelligence operatives while treading as lightly as possible upon the first amendment. The principal effort of the conferees concerning this bill was to resolve this particular issue in terms of the statement of manager's language explaining section 601(c), particularly its two principal elements—the terms "pattern of activities" and the "reason to believe" standard.

Substantively, the conference report which we bring back to the House is the House bill with several exceptions. We have accepted the Senate amendment which permits an individual to disclose information that solely identifies himself as a covert agent. We have accepted the Senate amendment limiting the definition of covert agent to active officers or employees of intelligence agencies and to present agents, sources and informants. We have accepted a substitute cover section that resolves the concerns of the other body, about the protection of the Peace Corps from use for intelligence operations.

The compromise provision on cover requires an annual report to Congress on the effectiveness of cover so as to monitor necessary improvements in cover arrangements and to guarantee that the identities of covert agents are masked adequately to justify criminal proscription of their disclosures.

In structuring statement of manager's language to explain section 601(c), the so-called Ashbrook or Chafee amendment, the conferees noted that there had been little explanation in the House of the Ashbrook amendment. The most satisfactory sources of explanation were those referred to in the Senate debate—the explanation provided by the 1980 report of the Senate Select Committee on Intelligence to accompany S. 2216, the Senate forerunner of this bill in the 96th Congress, and a colloquy between Senators CHAFEE and DURENBERGER which drew from and expanded upon this same report.

It was the intention of the conferees that these sources constitute the legislative history of this statute. Therefore, the conferees very carefully excerpted text from these sources. Every word was scrutinized and carefully considered. The resultant explanation is, I should emphasize, the best the conferees could agree upon.

Not everyone is happy with it, as perhaps today's proceedings will emphasize. The explanation provided in the statement addresses the central issues of proof and what activities would constitute a violation of the statute.

The principal point of this part of the statement is to emphasize what is and what is not covered by the concept of "pattern of activities" in conjunction with the "reason to believe" standard. What is proscribed by the bill, "naming names" as it is euphemistically called, is a limited type of activity. It is not intended to embrace "legitimate journalism." Now I use this phrase gingerly, because the first amendment makes it clear that Congress is not to sit in judgment on what "legitimate dissent" or "appropriate" speech is or ought to be. That is the point of the language provided in the statement of managers—to help to identify activities which are not proscribed by the statute, and to explain how prosecutors and judges should interpret the statute.

Mr. Speaker, that language in the statement of managers speaks for itself. It is the only explanation conferees intend to offer on what those crucial phrases mean. I, myself, could wish that is was even more explicit in some areas than it is. But I understand well, as I am sure Members of this body do, that in the process of compromise and debate that resolves issues of this kind, we must eventually vote yea or nay.

Before I conclude my statement, Mr. Speaker, I would be remiss if I did not add some words of praise. The first should go to RON MAZZOLI, the chairman of the Legislative Subcommittee who has worked so long and hard on this statute. Without his perseverance, patience, and good judgment, we would not be here today.

Second, I would like to pay tribute and special thanks to the gentleman from Illinois, BOB MCCLORY, who will be leaving the Permanent Select Committee on Intelligence at the end of this Congress and whose able work and bipartisan attitude on this legislation. Both as ranking minority member on the Subcommittee on Legislation, and as ranking minority member on the Committee on the Judiciary, He has assisted the committee and has assisted the efforts of this House in fashioning national security legislation protective of individual rights.

Last, I would like to pay tribute to a former colleague of ours, John Ashbrook, who was clearly most influential in the debate of this body on H.R. 4 and whose amendment to the committee bill helped shape the course of this legislation. We all miss his presence in the Intelligence Committee and on this floor.

Mr. Speaker, I urge the adoption of the conference report and close with an admonition that is contained in the statement of managers, and I quote:

The Conferees expect that the Department of Justice and the Federal Courts will limit the application of Section 601(c) to those engaged in the pernicious business of naming names as that conduct is described in the legislative history of this Act.

As one who had serious doubts about the constitutionality of this bill as it passed the House, and who returns with a conference report substantially similar to that bill, I must say that, based on the interpretation of this statute as provided in the statement of managers, I believe that this statute can be considered constitutional. I believe that it has a good chance to withstand the test of judicial scrutiny. It can do so because of its narrow focus and explicit avoidance of proscribing protected speech.

With all my heart I trust that it will serve to ensnare only those few who have made it their business to systematically identify and expose our undercover intelligence officers. Like all in this body, I sincerely desire to see an end to that unpleasant and illegal activity. I have confidence that, based on the intent of Congress as expressed by the conference report and the accompanying statement of managers, these goals are both attainable.

□ 1300

Mr. MCCLORY. Mr. Speaker, I yield myself such time as I may consume.

(Mr. MCCLORY asked and was given permission to revise and extend his remarks.)

Mr. MCCLORY. Mr. Speaker, first let me commend the gentleman from Massachusetts for his leadership and also to express my appreciation for his generous remarks on my behalf. It is a real privilege to serve on this important committee of the Congress and to participate in the legislative efforts of our committee, including the legislation emanating from this committee under the leadership of my colleague, the gentleman from Kentucky (Mr. MAZZOLI), chairman of the Subcommittee on Legislation.

Mr. Speaker, I rise in support of the conference report on H.R. 4, the Intelligence Identities Protection Act of 1982.

The record is both long and convincing on the need for legislation protecting the identities of U.S. covert intelligence agents. Our intelligence officers, and the people whom they recruit to provide information and assistance, work on behalf of our country's security—often at significant risk to their lives. The bill now before us would help minimize these risks by providing criminal penalties for the unauthorized disclosure of the identities of these outstanding men and women.

In this body, prior to the adoption of the "reason to believe" language offered by our late distinguished colleague, the gentleman from Ohio (Mr. Ashbrook), and in the other body prior to the adoption of identical language, the debate was long and complex—and, at times, even confusing.

Some have suggested that during this debate the effect of the "reason to believe" standard was inaccurately stated. In this light, it was the effort of the conferees, in the statement of managers, to clarify the meaning of the statutory language and to some extent, this goal was met. However, I am concerned that some portions of the statement are not entirely clear and therefore do not do complete justice to the words both Houses overwhelmingly agreed to insert into this legislation.

Of course, it is generally accepted that the meaning of a law can best be found in the plain meaning of the words used to comprise it. As the newest Justice of the Supreme Court stated last week in the case of FBI against Abramson (dissenting).

While it is elementary that the plain language interpretation of a statute enjoys a robust presumption in its favor, it is also true that Congress cannot, in every instance, be counted on to have said what it meant or to have meant what it said. Statutes, therefore, "are not to be construed so strictly as to defeat the obvious intention of the legislature." Thus, a "clearly expressed legislative intention" to the contrary could dislodge the meaning apparent from the plain language of [a statute] even though that meaning "must ordinarily be regarded as conclusive." Therefore, only to the extent that the Statement is unequivocally clear can it modify the words of the statute, and then only if there is a lack of clarity in the statute itself.

Justice O'Connor best made her point by quoting Chief Justice Marshall:

The intention of the legislature is to be collected from the words they employ. Where there are no ambiguities in the words, there is no room for construction.

Mr. Speaker, it is my contention that in the bill before us now there is no ambiguity in the words we have employed, for they clearly speak of our intent to put an end to the pernicious act of wantonly exposing the identities of our covert intelligence agents. Simply stated, if an individual meets the elements set out in either subsection (A), (B), or (C) of section 601—even if the defendant claims to have had some ulterior motive or some higher moral purpose—then a crime has been committed and punishment must follow, to do anything less would cause a disservice to our intelligence agents—and to our country's security.

Mr. Speaker, last week we considered the first budget resolution. There, we debated how much money should be collected by the Government—and from what sources—and how much should be spent—and for what. I would be surprised if there were fewer than 435 points of view expressed during the debate, and all we were talking about was money.

Today, on the other hand, we are considering a matter which calls on this body to effect public policy while remaining within the constraints of the document which provides us with our most basic authority—the Constitution. Certainly, when working in an area fraught with constitutional concerns, it should not seem surprising that there are more than a few points of view on the proper course to follow.

The difference between the budget resolution and the Intelligence Identities Protection Act is that here we have agreed upon a text, though there is some disagreement on how it can best be described.

We need this legislation, and I do not feel that some lack of clarity in the statement of managers justifies opposition to its enactment. I have faith in the judiciary's ability to recognize the intent of Congress from the plain meaning of the words we have used to construct the legislation, and in the final analysis that is what counts.

I urge the adoption of the conference report.

Mr. BOLAND. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Kentucky (Mr. MAZZOLI), the chairman of the Subcommittee on Legislation.

Mr. MAZZOLI. Mr. Speaker, I rise in support of the conference report on H.R. 4.

Today's vote is the culmination of a bipartisan legislative effort that began in 1975 when the first names of agents bills were introduced soon after the tragic death of Richard Welch in Athens.

Since then four congressional committees have considered the matter, issuing seven reports in the process. The Subcommittee on Legislation of the House Permanent Select Committee on Intelligence, which I chair, has considered this issue in three different Congresses.

The complex constitutional, legal, and policy questions which lie at the heart of H.R. 4 have been fully debated on the floors of both Houses, in the editorial pages of the Nation's newspapers, on television, and in the law journals—as well they should have been.

While it has taken a long time to arrive at where we are today, it was time well spent. The First Amendment issues were difficult to resolve, but they have been resolved rather than avoided. We have striven to work within the boundaries of the First Amendment, not to work around them.

The difficulties arose, of course, primarily in connection with section 601(c), which applies to those who have not had access to classified information and who disclose information theoretically obtainable from nonclassified sources. The Committee of Conference was very careful in explaining these provisions in the statement of managers.

I and the majority of the members of the Intelligence Committee preferred a version of section 601(c) other than that adopted. I am hopeful, however, that the provision, as explained by the statement of managers, will be upheld by the courts.

The statement of managers about 601(c) does not satisfy some members. But all it does, in my opinion, is lend emphasis to what I think is clear from the language of the bill; and that is, that section 601(c) is directed at those whose demonstrated purpose is to uncover and disclose the identity of any and all covert agents, wherever they may be and no matter what the circumstances of their service.

It seems to me that it is not difficult at all, and I trust the Justice Department and the jury will have no difficulty, in distinguishing between those I have just described who are in the business of naming names, and those whose speech or writing might disclose an agent's identity but who have not spoken or written:

In the course of a pattern of activity intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States.

The other issue of prime concern to the conferees was the definition of covert agent.

The definition is, of course, crucial because it is the disclosure of the identity of a covert agent that subjects one to criminal prosecution.

The conferees adopted the definition contained in the Senate amendment. In so doing, the conferees chose language identical to that reported by every committee that has considered the issue. The House, however, had decided on the different language offered as a floor amendment by the gentleman from New York, Mr. SOLOMON.

The primary difference between the two versions is that the Solomon amendment included many more people within the definition of covert agent than did the other version. In the case of intelligence agency employees, the Solomon amendment included former as well as present employees. In the case of those who are U.S. citizens but had not been employees, the Solomon amendment included former as well as present informants and sources.

In agreeing to the Senate amendment, the majority of the House conferees were influenced by the following considerations:

First, at no time during the consideration of the legislation did the CIA, the FBI, or the Department of Defense urge that the broader definition be adopted;

Second, the narrower definition itself enlarged the scope of the bill well beyond the undercover CIA officers who have been the target of the naming names columns; and

Third, the broader definition could include with it such people as Edwin Wilson and Frank Terpil, former CIA employees who provided arms to Libya.

The definition chosen, in my opinion, is sufficient to protect the identities of all those whose disclosure could

harm U.S. intelligence or expose themselves to harm, and who reasonably can be considered subject to the activity which has been identified to the Congress as a problem. To go further and unnecessarily broaden the reach of a statute regulating speech could serve no useful purpose and would further subject the statute to constitutional questions.

Before closing. I would like to extend my thanks to the ranking minority member of my subcommittee, the gentleman from Illinois, Mr. McCLORY. He and I have sat through many hours of testimony and markups on H.R. 4 and its predecessors, both in the Intelligence Committee and the Judiciary Committee. We have always agreed that legislation was needed to stop those in the business of naming names and have more often than not agreed on what it should contain. He has brought to the deliberations over this bill the same dedication, intelligence, and courtesy that has always characterized his service in this body. The Intelligence Committee, the Judiciary Committee, and the Congress will miss him.

I also want to give tribute to our late colleague, Mr. Ashbrook. While John and I often disagreed—as we did on the intent standard of this bill, he was a fine representative of his constituency, and an effective member of the Intelligence Committee in the House.

I urge that the conference report on H.R. 4 be adopted.

□ 1315

Before closing, Mr. Speaker, I would like to extend my thanks to the ranking minority member of our subcommittee, the gentleman from Illinois, Mr. McCLORY. He and I have sat through numerous hearings on this matter of H.R. 4 and its predecessors, both in the Intelligence Committee and in the Judiciary Committee. We have always agreed that there should be legislation, even though we may have disagreed from time to time on some of the details. But Mr. McCLORY has brought to the deliberations on this bill the dedication, the intelligence and the courtesy which has always characterized his service, and as our chairman has said, he will soon be leaving us and we are sorry to see him go. We will certainly miss him on the Intelligence Committee.

I would also like to pay tribute at this time to our late colleague, John Ashbrook. While John and I also did not always agree, we served together from the very first day I walked into the Congress. We were first together as colleagues on the Education and Labor Committee, and then on the Judiciary Committee and on the Intelligence Committee. John was a fine person, a fine Representative, a very effective member of all the committees on which he sat, and he will be missed.

Mr. Speaker, I urge support of the conference report.

Mr. YOUNG of Florida. Mr. Speaker, will the gentleman yield?

Mr. MAZZOLI. If the chairman has time to permit me to yield, I will yield to the gentleman from Florida.

Mr. YOUNG of Florida. I thank the gentleman for yielding.

Mr. Speaker, I appreciate the work that the gentleman did as chairman of the subcommittee to get this bill to the point that it is today. I appreciate the comments that he had to make today about the statement on the part of the managers. There are some of us who are concerned that this statement was an effort to water down or dilute the effectiveness of the legislation that we consider.

Could the gentleman state categorically that that is not the case, and that that is not the intent?

Mr. MAZZOLI. If the gentleman will yield, I would be very happy to answer the gentleman categorically and strongly that there was no intention on the part of the managers in writing this language to water down the bill which was passed in the House of Representatives which bore, as we mentioned earlier, the imprimatur of the gentleman from Ohio, Mr. Ashbrook. It is only to identify those areas for the future counsel of prosecutors and jurists who will have some responsibility for interpreting the provisions that we pass. The effort of the mangers—and I have always appreciated the support of the gentleman from Florida—is to protect the people who serve this Nation in undercover capacities in dealing with our national intelligence from the reprehensible and thoroughly disgusting activities of identifying these people, subjecting them to harm or in effect to ruin their ability to perform for this Government, which has triggered this bill, H.R. 4. The statement of the managers is only to give guidance in the prosecution of those people, and hopefully to be sure that the challenge which probably it will receive on its constitutional basis will be survived.

Mr. YOUNG of Florida. So the gentleman assures us that the legislation itself is every bit as effective and as strong as we expected it to be and intended it to be when the House passed it in the first place.

Mr. MAZZOLI. I can assure the gentleman of that. And I would not have signed as a manager on the part of the House were I to have felt that in any part of this we have watered down or made impotent the stretch and reach and effectiveness of H.R. 4. There has never been any disagreement about proscribing what the statement describes as naming names. The only dispute was on the elements of proof required by the intent or reason to believe standards.

Mr. YOUNG of Florida. I thank the gentleman for yielding to me.

Mr. MAZZOLI. I thank the gentleman.

Mr. BOLAND. Mr. Speaker, will the gentleman yield?

Mr. MAZZOLI. I yield to the distinguished chairman.

Mr. BOLAND. Mr. Speaker, in his interpretation of what the statement of the managers on the part of the House signifies with reference to watering down the bill itself, I would agree with the explanations given by the distinguished chairman of the Subcommittee on Legislation in response to the Member from Florida, Mr. YOUNG.

Mr. MAZZOLI. I thank the chairman.

Mr. McCLORY. Mr. Speaker, I want to express appreciation for the remarks of my colleague from Kentucky, the chairman of the Subcommittee on Legislation. This legislation which emanated from the subcommittee under the gentleman's able leadership, is extremely important, it seems to me, for it significantly enhances effectiveness of our various intelligence agencies.

Mr. Speaker, I now yield 3 minutes to the gentleman from Virginia, Mr. ROBINSON, the ranking member of the Select Committee on Intelligence.

(Mr. ROBINSON asked and was given permission to revise and extend his remarks.)

Mr. ROBINSON. Mr. Speaker, I rise to commend my colleagues on the House Permanent Select Committee on Intelligence for a job well done. This bill to protect our intelligence personnel is long overdue. It is on the verge of becoming law because of the hard work of a number of our colleagues. The chairman of the House Intelligence Committee, the gentleman from Massachusetts (Mr. BOLAND), the chairman of the Subcommittee on Legislation, the gentleman from Kentucky (Mr. MAZZOLI), and the ranking minority member of the subcommittee, the gentleman from Illinois (Mr. McCLORY), put in long hours and hard work to reach the goal we have achieved today.

But, in a number of important ways, this bill is a tribute to our late colleague, John Ashbrook, of Ohio. It was Congressman Ashbrook's amendment that strengthened the bill by replacing the intent provision with a "reason to believe" standard. Now anyone who intentionally identifies and exposes covert agents with reason to believe that it would impair or impede foreign intelligence activities would be covered by this bill. Mr. Ashbrook's amendment was passed by this House by a vote of 226 to 181. The bill with the Ashbrook amendment was passed by a vote of 354 to 56.

In addition, John Ashbrook and our colleague from Florida (Mr. YOUNG) succeeded during the discussions, while the bill was being drafted, in including FBI informants in the foreign counterintelligence and counterterrorism programs. Mr. YOUNG was mainly responsible for keeping that provision in the bill during the various phases of rewrite and redrafting. This means

that all of those people who aid the FBI in its work of protecting our country against hostile intelligence services and those who act on their behalf, are protected by this bill, if their identities are classified.

I urge my colleagues to again provide an overwhelming vote for this important and long delayed legislation.

Mr. BOLAND. Mr. Speaker, I yield 6 minutes to the distinguished gentleman from California (Mr. EDWARDS) who was a conferee from the Committee on the Judiciary.

(Mr. EDWARDS of California asked and was given permission to revise and extend his remarks, and to include extraneous matter.)

Mr. EDWARDS of California. Mr. Speaker, the debate on this legislation has now extended over two Congresses. Throughout that process, I have supported the effort to punish those who would abuse their positions of trust to the detriment of the lives and safety of our intelligence agents overseas as well as U.S. national security interests. But this bill, however well-intentioned in its effort to prevent exposure of our covert agents, goes far beyond that goal to trample on first amendment freedoms. For the first time in American history, the publication of information obtained lawfully from publicly available sources would be made criminal.

I will not take the time of this body to repeat my objections at length here—they appear in my earlier statement when this bill was considered on the floor last September. I also joined in the dissenting views of a number of members of the House Judiciary Committee when that committee considered and reported similar legislation 2 years ago. (See House Report 96-1219, part 2, pages 12-18).

Let me just say that the changes that have been made in the bill between then and now do not lessen my concern. I believe that no amount of tinkering—either with the statutory language itself or with the report—can render this bill constitutional as long as it seeks to criminalize publication of unclassified information or information already in the public domain.

Of course, I recognize and applaud the efforts of the House Intelligence Committee to narrow the scope of the bill. Those efforts, nevertheless, were rejected by the House of Representatives as were similar efforts by the appropriate committee in the other body. I also recognize the efforts of the conferees, led by the distinguished chairman of the House Intelligence Committee, to draft report language which would make it clear that this new statutory language adopted on the floor over the objections of the Intelligence Committee was not intended to broaden the coverage of the bill, but only to change the Justice Department's burden of proof. But no matter how well-intentioned this effort, it is doomed to failure by language of the bill itself.

The fundamental flaw in this legislation is simply this: It seeks to punish private citizens for publishing available information. Strip away all the elements of proof that are required; strip away all the careful drafting and cautious report language, and we are left with the simple fact that this bill attempts to do the undoable. It attempts to tell private individuals that they will be subject to criminal penalties for printing, publishing, repeating, speaking, or otherwise disclosing information that is not classified and has been obtained totally by lawful means. In the final analysis, it is the mere fact of publication which makes their action punishable. And in the final analysis, it is this fact that will cause this statute to fall before the requirements of the first amendment.

What disturbs me the most about this legislation is that it is not an isolated case. It is, I believe, part of a new climate of Government conduct, to operate in greater secrecy, to withhold more information from the public, and to punish those who attempt, however lawfully, to pierce this veil of secrecy.

For example, the administration has promulgated a new executive order expanding the powers of the CIA to spy on Americans both in this country and abroad and to mount covert operations inside the United States. Through yet another executive order, it has put in place a massive expansion of the security classification system which enshrouds the uses of these new intelligence powers in permanent secrecy.

At the same time, the administration is pressing Congress to eliminate key sections of the Freedom of Information Act, and CIA officials have urged private scientists to submit sensitive research plans to the Government for "preclearance" so that the fruits of their research can be classified and kept secret from "our foreign adversaries." These efforts have all been undertaken in the name of national security. But it is in this particular context—when it is armed with the criminal law—that national security presents its gravest threat to the first amendment. For this reason it has never been a crime simply to publish classified information relating to the national defense. Since 1917, the espionage laws have applied only to situations in which such information is secretly passed to a foreign government for the specific purpose of injuring the United States. Even during both world wars, Congress declined to make it a crime to publish national defense information on the ground that to do so, no matter how compelling the security argument might be in any particular case, would undermine the first amendment.

This legislation breaks with that tradition. It is the first of the administration's initiatives to stifle public discussion of national security issues to move through the legislative process. Let it be the last. We must reject all legislation and we must oppose every executive branch effort which curtails liberty in the name of national security and stands in opposition to the basic principles of the Constitution and the Bill of Rights. For, ultimately, it is the respect and protection we afford free speech that distinguishes us from the nations within which the CIA secretly operates. If a free society is sacrificed for a better intelligence system, we have compromised our very goal.

[From the New York Times, Mar. 4, 1982]

THE SPY BILL WRAPPED IN THE FLAG

The closer the Senate gets to voting on the "Intelligence Identities Protection Act," the clearer it becomes that this bill dangerously exceeds its announced purpose. It was prompted by former agents who break their oaths and expose American secret agents in risky intelligence work. But Congressional anger soon spread to individuals who never worked for the Government but engage in similar exposures using publicly available information. And that, in turn, has raised concern about the possible use of the act against news organizations.

If there was any doubt that the act extends that far, it has now been put to rest. Senator John Chafee, a chief sponsor, has clarified the bill's threat to conventional journalism—and public discussion generally.

Asked whether a prosecutor could use the bill against reporters and news organizations for exposing crimes and abuses by agents and informants, the Senator had this reply: "I'm not sure that The New York Times or The Washington Post has the right to expose names of agents any more than Mr. Wolf or Mr. Agee," two of the bill's main targets. "They'll just have to be careful about exposing the names of agents."

Senator Chafee makes the bill's danger explicit without seeming to understand its cost to public discussion of security issues. Perhaps inadvertently, he makes the case for trimming back this inflated piece of legislation. No assurances that the law would be carefully administered can suffice when the warning to reporters is: be careful about getting the Government mad.

Unfortunately, to cite a case in The Times's experience, being careful doesn't help decide how to deal with former spies like Edwin Wilson and Frank Terpil. The Times put together—carefully—stories about how the former agents trained terrorists abroad and engaged in suspicious weapons and technology deals. The stories raised questions about the former spies' connections to the Central Intelligence Agency, whether real or feigned.

At a minimum, these foreign adventures challenged the country's ability to avoid embarrassment by once trusted employees. The stories brought about other investigations, by Congress and the C.I.A. itself.

But it doesn't seem to matter how much care went into those stories. It doesn't matter how much they have been supported by official investigations. None of that would protect the paper against a wrathful prosecutor armed with the pending bill.

The Senate should restrict it to the punishment of people like Philip Agee, the former spy who first specialized in agent exposure. Congress cannot reach private citizens like Louis Wolf, publisher of the Covert Action Information Bulletin, without chilling other, more precious journalism and debate. In no case can the Senate responsibly follow the House's reckless example and make it a crime to identify an agent

without even requiring proof of criminal intent.

Until now, the Reagan Administration has managed to wrap this bill in the flag. That conceals its danger to liberty—and to the public knowlege on which true national security rests. There is a difference between patriotism and chauvinism. Senators Biden, Bradley, Leahy, Specter and Quayle have been in the forefront of those who have exposed at least some of the bill's excesses. The entire Senate needs equal courage and wisdom.

[From the New York Times, Mar. 22, 1982]

THE RIGHT TO NAME NAMES

"Congress shall make no law," says the First Amendment, "abridging the freedom of speech or of the press." But an angry, flag-waving Congress is making it a crime to print names the Government doesn't want published, even when they are derived from public sources. Last week the Senate refused to be outdone by the House in making the Intelligence Identities Protection Act offensive to the Bill of Rights.

We understand, indeed share, much of the anger. It is engendered by Philip Agee, a former C.I.A. agent, and Louis Wolf, an ally who never worked for the Government. They have published lists of covert agents in efforts to hobble Amercan intelligence. They claim a journalistic mission but their listings, about as journalistic as a phone book, expose the nation's undercover agents with little regard for possible illegalities.

Some response to such irresponsibility was warranted. Congress properly set out to declare it a crime for Mr. Agee to misuse information acquired in his work for the Government. But despite warnings that it would be constitutionally impossible to prohibit the activities of Mr. Wolf, a private citizen, the House tried anyway last fall and the Senate has now followed suit.

The results are bills that would remedy irresponsibility of one sort with irresponsibility of another. Any legislation aimed at Mr. Wolf was fraught with danger for all journalists, but the Senate and House rejected measures that were at least arguably closer to constitutional standards. They refused to require strict proof of deliberate intent to impair or impede American intelligence through exposure of agents' identities. Without that, they leave no room for important journalism that necessarily names names.

The C.I.A. held out for an easier burden for prosecutors, proof only of a "reason to believe" the exposure would harm intelligence. The Reagan Administration went so far as to make this relaxed rule a test of loyalty; fearing that they would be called soft, many senators melted.

"Reason to believe" that a published fact will somehow damage Government is too easily charged. It amounts to saying a reporter should have known that some official would think an article harmful, as some official always does. It's a standard better suited to negligence cases than criminal law. Indeed, Senator Chafee of Rhode Island, a leading advocate of reason-to-believe for news organizations, persuaded the Senate last year that reason-to-know was too tough a test in prosecuting corporate officials for tolerating bribery abroad.

What happens when Congress thus ignores the Constitution? Courageous members will continue to fight the issue in House-Senate conference. Resourceful journalists will maintain their vigilance against official secrecy. Government can forbear and use its illegitimate power sparingly. All should hope the courts will wipe the law from the books.

[From the Washington Post, Mar. 3, 1982]

PROTECTING INTELLIGENCE AGENTS

The Senate has begun consideration of a bill that would outlaw the activity of a small band of individuals determined to destroy America's foreign intelligence apparatus by revealing the names of covert intelligence agents. The practice, associated with author and former CIA officer Philip Agee, has already been cited as leading to the murder of the CIA station chief in Athens in 1975 and to an assassination attempt on the life of another American official in Kingston, Jamaica, in 1980. Mr. Agee has revealed the names of 1,000 alleged CIA officers, and a newsletter, Covert Action Information Bulletin, edited by Louis Wolf, has printed 2,000. Legislation to inhibit such practices is not a bad idea as such.

Prosecuting private citizens for publication of any material has constitutional implications, however, and special care must be taken to delineate the conduct Congress wants to inhibit while protecting legitimate activities where no intent to disrupt intelligence activities exists. Readers will note that this newspaper, like all others, has a strong interest in preserving broad latitude in reporting foreign affairs.

The best way to ensure that the real culprits are reached by the law while others are protected is to require the government to meet a standard of proof that includes "intent to impair or impede the foreign intelligence activities of the United States." This is the language of the bill that was reported by the Senate Judiciary Committee last fall and that is now being considered by the full Senate. It is expected, however, that an amendment will be offered that would substitute for the intent standard a simple requirement that the accused simply "had reason to believe" such a result would occur. This amendment is identical to one that was adopted on the House floor when that body passed the bill last September. It is the version preferred by the administration, though Richard Willard, the attorney general's counsel for intelligence policy, has stated that either version of the bill is acceptable so long as some bill is enacted without further delay.

The requirement that intent be proven in criminal cases is an essential element of Anglo-Saxon jurisprudence. It is especially important that it be preserved in this instance because a lesser standard may inhibit the exercise of legitimate First Amendment rights by those having absolutely no desire to cripple our intelligence services.

[From the Louisville Times, Feb. 26, 1982]

SENATE VERSION OF SPY DISCLOSURE IS BEST—IT MUST NOT ADOPT OPPRESSIVE HOUSE VERSION, WHICH GOES TOO FAR

Congress appears determined to pass a new law this year that will make it a crime for citizens to disclose the identity of American intelligence agents, even when the information comes from public or unclassified sources.

The object is to crack down on a few anti-CIA zealots who maliciously publish agents' names and whose dirty work has had tragic results.

While Congress is justly angry about such disclosures, its remedy could do more to deny the public legitimate information about the government than to protect U.S. spies.

Since there's little doubt that a "names of agents" law will be passed, however, the issue is which of two versions the lawmakers will adopt. A crucial choice is expected early next week in the Senate.

Unfortunately, the House has already passed a bill that would discourage public scrutiny of spy agencies and is surely unconstitutional.

A far better version being considered by the Senate could deal with the problem that concerns Congress without insulating the the CIA from legitimate inquiry. It deserves the support of Senators Ford and Huddleston.

No one seriously objects to portions of the bill that would punish former agents who deliberately disclose secrets and betray erstwhile colleagues.

But there are important differences in the provisions that apply to the rest of us—Americans who do not have classified information, but do have an interest in finding out whether intelligence agencies operate within the law.

The House went seriously astray when it decided that a person could be guilty of a crime if he disclosed an agent's identity *with reason to believe* that intelligence activities would be impaired. A reporter or other citizen who exposes CIA abuses could go to jail under that standard.

That's why it's imperative that the Senate insist on the version which requires the government to prove a person acted with *intent* to damage intelligence activities.

This language would apply to those whose sole purpose is to impair intelligence but not, most observers agree, to publication of legitimate information.

Moreover, the "intent" version is acceptable to the CIA. If there must be a law, this one does what Congress wants in the least offensive manner.

[From the Pittsburgh Post-Gazette, Sept. 28, 1981]

AN UNSOUND SPY LAW

Like other human beings, journalists are sometimes tempted to exaggerate the dangers to society of measures that might limit their freedom of operation. So there is undoubtedly some hyperbole in dire predictions that investigative journalism will be fatally crippled by a bill in Congress that would punish the publication of CIA agents' names. It will take more than one clumsily drafted (or even unconstitutional) law to prevent journalists from investigating abuses by any government agency, the CIA included.

Still, that is no argument for the enactment of a bill that might needlessly interfere with journalistic investigation of the sort of illegal CIA spying on Americans that the agency would like to have the nation forget. And a bill passed last week by the House fits just that sorry description.

Designed to deal with the identification of CIA agents by agency renegades like Philip Agee, the bill as it emerged from the House Intelligence Committee would have made it a crime to identify intelligence agents only if the person making the revelation did so with the "intent to impair or impede the foreign intelligence activities of the United States." That careful language obviously was designed to deal with the discrete problem that prompted legislation in this area in the first place—the deplorable campaign by avowed opponents of U.S. foreign policy to cripple the CIA abroad.

Unfortunately, on the House floor, conservative Republican Rep. John Ashbrook succeeded in having that qualifying language stricken and replaced with a less precise provision making persons criminally liable if they "had reason to believe" that

disclosure of an agent's name would harm the national interest.

The difference between the two formulas might seem a matter for legal hairsplitters. But the Ashbrook language, endorsed, by the Reagan administration could be used against not only the Philip Agees of the world but also journalists who happened on CIA activities directed (illegally) against American citizens or in contravention of presidential or congressional directives.

Depressingly, similarly broad language has been adopted by framers of a Senate version of the spy bill. That makes it unlikely that a conference committee will take the—admittedly speculative-fears of journalists into account when writing a compromise measure. But those senators and representatives who believe that seemingly fine distinctions can be important should press for a defeat of the broader bill in the respective chambers.

[From the Chicago Tribune, Oct. 27, 1981]

. . . AND LIMITING A DANGEROUS BILL

The U.S. Senate is about to consider a bill that could have a serious impact on the ability of Americans to discuss the government's intelligence activities. It makes it a crime, under certain circumstances, to divulge the name of a secret U.S. intelligence agent.

The goal—to protect agents abroad from the kind of campaign of disclosure that has been mounted by ex-CIA agent Philip Agee—cannot be faulted. But when the House of Representatives got its hands on this idea, it pushed it well beyond the Agee situation and passed a bill that puts at his peril anybody who for any reason decides even to talk about the subject.

One particularly dangerous feature of the bill passed by the House does not yet appear in the Senate version that cleared committee and is heading for a floor vote. The House version requires that prosecutors only show that a person accused of violating the law had "reason to believe" the disclosure would "impair or impede" the work of U.S. intelligence agencies.

This language, written into the bill at the last minute, renders the motivation of the disclosure irrelevant, putting the university president concerned about having intelligence agents on his faculty or the journalist reporting the misdeeds of a rogue operative on the same footing as the notorious Agee. And it strikes so deeply into the ordinary fabric of expression—forbidding all discussion of a matter that certainly can be of legitimate interest to the public and even forbidding discussion motivated by a reasonable concern that one's employes have undivided loyalties—that it makes what is a questionable law to begin with almost certainly unconstitutional.

The CIA has said that it does not object to the Senate version, which would require prosecutors to prove an intention to do damage to intelligence activities before they could get a conviction. There is no reason to push any further this troubling law—which would punish disclosures even if the information is gleaned from purely public source material.

Undoubtedly there will be a move on the Senate floor to amend the bill to conform to the House's foolish version; if the bill itself cannot be voted down, at least this amendment must be defeated.

[From the New York Times, Nov. 2, 1981]

SHOWING OFF OF SECRET AGENTS

Should Congress decree that information in the public domain may not be publicly repeated? The very idea represents a radical departure from the American tradition of free speech and press. Yet Congress is seriously considering a bill to make publishing names of covert intelligence agents, even on the basis of publicly available knowledge, a crime. The House passed such a measure last month and a similar bill, almost as objectionable, awaits a vote by the Senate. The Senate should bring Congress to its senses and reject this proposal.

Government is free to keep its secrets—in ways that do not offend the First Amendment. It may swear employees in sensitive jobs to secrecy and it may punish violations of their oaths. But to pass a law that declares non-secrets off limits is to abridge the freedom of speech and press. Congress may not do that.

The legislation has strayed from an earlier, more reasonable course. Congress was rightly angry that Philip Agee, a former C.I.A. agent, misused inside information when he published lists of secret American agents for the avowed purpose of destroying their effectiveness. Present and former agents may not violate their secrecy oaths even in pursuit of their First Amendment rights.

But then the bill's drafters went further, provoked by the antics of Louis Wolf, who never worked for the Government and was never entrusted with its secrets. Working from public documents, he has compiled and published similar lists of supposed agents.

However reprehensible such activity may be, it is simply unconstitutional to try to punish outsiders for trying to figure out, talk about and write about those secrets. It is also unwise, for it could reach more conventional reporting, which often must and should say things that Government doesn't want said.

Even more dangerous is the loose standard of proof in the House version. A prosecutor could bring a charge, and a jury could convict, if the evidence merely showed that the publisher had "reason to believe" the disclosure would hurt U.S. intelligence. That is, whatever his state of mind, the defendant should have known better. At least the pending Senate bill requires evidence that the accused fully intended to impair or impede American intelligence by the very act of disclosing a secret name.

The Reagan Administration wants the looser version but doesn't need it. William Casey, the C.I.A. chief, wrote Congress last spring that either version would meet the Government's needs. Congress has every reason to believe that both versions are unconstitutional, so a Senate vote this week for either amounts to posturing, showing off a reckless patriotism. And there is no excuse at all for choosing the more offensive version.

[From the New York Times, Sept. 26, 1981]

A DUMB DEFENSE OF INTELLIGENCE

The House of Representatives voted the other day to prohibit the identification of present and former American intelligence agents, even if the knowledge is gained from public sources. Fortunately this legislative folly is forbidden by the Constitution, which says Congress shall make no law abridging free speech and press. Unfortunately for freedom—and national security—such a law could inhibit a lot of worthy speech before the courts administer the final constitutional rites.

It's a case of blind zeal and misdirected anger. Understandably incensed by a few individuals who specialize in blowing the cover of secret operatives abroad, the House would indiscriminately suppress reporting that exposes intelligence abuses and stirs reform. Perhaps it will still be rescued by a clear-eyed Senate Judiciary Committee.

Congress's anger was first drawn by Philip Agee, a former C.I.A. agent who practiced a crude and brutal form of politics. Applying his knowledge of spying, he tried to destroy covert operations by figuring out which Americans were stationed abroad under false cover and publishing their names. Louis Wolf, a writer who never served in Government, does the same thing, apparently without the benefit of inside information.

"The Philip Agees of this world" are said to be the targets of this reckless legislation and Mr. Agee, at least, has had few defenders. He has obviously violated his oaths and obligations to protect intelligence secrets gained on the job. But outlawing what Louis Wolf does strikes at every reporter and scholar who would publish facts that Government prefers to keep concealed.

Constitutional freedoms aside, such a prohibition is profoundly unwise. Most reporting, even in embarrassing terrain, advances American interests. In recent weeks, for example, this newspaper has published numerous articles about the shady activities of two former American spies, Edwin Wilson and Francis Terpil. This ambiguous ties to the C.I.A. and their dealings with terrorists have damaged the United States and fostered violence abroad. Names are indispensable in such stories.

The House bill is so loosely drawn that a prosecutor more interested in secrecy than reform could well consider The Time's stories illegal. Never mind that they have inspired official soul-searching and a necessary Senate inquiry.

The danger within the danger is this bill's standard of legal proof. It would ask a jury to decide whether a publisher had "reason to believe" that disclosing an agent's identity would damage national security; in other words, the mere assertion by a protective Government that it might suffer damage would become evidence of a crime of speech. The House refused to settle for a more rational standard, requiring proof of "intent to impair or impede" the nation's foreign intelligence. Not even the Director of Central Intelligence, William Casey, wanted to go beyond that.

National security is not synonymous with secrecy at all costs. Prudent safeguards against the irresponsible do not require a sacrifice of constitutional liberties. Members of Congress are paid to know the difference.

[From the Christian Science Monitor, Sept. 29, 1981]

Throughout United States history there has always been an uneasy tension between those persons who have sought to protect national security and state secrets and civil libertarians who favored maximum freedom of speech and the absolute accountability of public officials. Sometimes the tension has equalized itself out. All too often, however, there have been periods of excess when the hand of authority was used to stifle dissent, as in the case of the Wilson administration during World War I when it vigorously sought to jail "subversives" and Congress enacted the Espionage and Sedition acts.

While the present period obviously represents nothing like the darma of those years, there is a certain mood in the land which, unless carefully controlled, could invite a return to the kind of secrecy and lack of accountability that ofter marked government before the Watergate-era reforms of the mid-1970s. Efforts are currently underway to so shroud U.S. intelligence agencies in a privileged shield of secrecy as to make such agencies virtually unanswerable to the inquiries of a free press or a critical public.

Two recent manifestations of this trend are noteworthy:

1. The House last week enacted a measure that would make it a crime for private citizens to disclose the identity of a U.S. intelligence agent, even if the information came form public sources. Lawmakers have sought such a measure for the past five years after a CIA station chief in Athens was assassinated following publication of his name.

2. CIA chief William Casey is urging Congress to exempt national intelligence agencies from the Freedom of Information Act, which allows private citizens (including journalists) the right to petition government agencies for nonclassified information.

Admittedly there is something to be said on behalf of both moves. Identifying names of secret agents is reprehensible. The press, for its part, must exercise the highest degree of responsibility and professionalism in national security matters.

What is worrisome, however, is that the way the house bill has been drafted could prevent the disclosure of abuses by intelligence agencies. The measure says that a person, including a journalist, would be criminally liable if he or she had "reason to believe" that disclosure of the agent's identity would harm national security interests. This was a change from a more restrictive House Intelligence Committee version that said criminal liability would result if the person doing the disclosing had specific "intent to impair or impede the foreign intelligence activities of the United States."

The Senate should reject the House phrasing and adopt the stricter-intent requirement. The fact is that in recent years there have been disclosures of a number of cases where federal officials and intelligence officials have misused their authority and violated the law. Would the public be better served for not having had the abuses come to light, or even letting the pesons involved continue in their worngdoing? the House bill invites coverups based on "national security" allegations.

As for totally excluding the CIA and other intelligence agencies from the Freedom of Information Act, such a step would be injurious to the public. The Freedom of Information Act already excludes the release of a broad range of classified information. To exempt a spy agency entirely from any measure of accountability is to make that agency in a sense the master of the public.

For lawmakers and the Reagan administration, the delicately balanced goal must be to protect US agents and spy agencies—as well as the public and nation they are called upon to serve.

[From the Boston Globe, Sept. 29, 1981]

The overwhelming House approval of sweeping legislation making it a crime to disclose the names of US intelligence agents poses a threat to the workings of the press and could limit the opportunity of Americans to learn about the doings of their own government.

So-called "names of agents" bills have been a staple of the legislative diet in Washington for five years. The primary target of all of the bills has been one man, former CIA agent, Philip Agee, who has made a career of ferreting out and exposing the names of clandestine US agents abroad.

The object of Agee's work is to undermine US intelligence efforts and he does not have and should not have any political support. Thus, there is no opposition to provisions of the bill enacted by the House which would make it a crime for persons with access to classified information to make public the names of agents.

The issue has always been how to treat the disclosure of agents' names by persons never with the intelligence community; that is, by reporters and scholars. Years have been spent trying to draft the narrowest possible language.

The House Intelligence Committee, led by Rep. Edward Boland (D-Mass.), ultimately agreed on careful wording that made it a crime for those without direct access to classified information to name agents only if they disclosed indentities with the specific "intent to impair or impede the foreign intelligence activities of the United States."

This wording would not have prevented a reporter or scholar from reporting the activities of intelligence agents in a foreign country if the intent was to report on the activities of the American government—that is, to inform the American public about actions being taken in their behalf—not more narrowly with the specific purpose of undermining the work of those agents.

On the House floor, however, that wording was stricken and new language inserted. It allows for the criminal prosecution of persons who report the names of agents if they "had reason to believe" it would harm national security interests. That language is so broad that it ignores the motivation of the writer involved. It could well chill efforts, whether by scholars or journalists, to understand and publish accounts of American intelligence activities, including activities that would be abhorrent to the vast majority of Americans if revealed.

The next move is up to the Senate Judiciary Committee where there is certain to be a close vote on the precise language involving those, without direct access to classified information, who reveal the names of intelligence agents. The active involvement of Sen. Edward Kennedy particularly could be the key to approval of a reasonable bill that seeks to prevent the sabotaging of bona fide intelligence efforts without undermining First Amendment rights.

[From the Washington Post, Oct. 27, 1981]

NAMING AGENTS

Congress is intent upon ending the practice of a few spoilers' exposing the names of the United States' secret intelligence agents. This is a worthy purpose, but it gives rise to a troubling complication. The two main legislative proposals offered to punish namers of names would penalize publication, including in some instances publication of unclassified information available in the public domain, and thus both of the proposals would cut into the integrity of the First Amendment. One of the proposals, however, would cut a good deal less than the other. It is important that Congress recognize this difference as the crucial stage of Senate floor action draws near.

The House last month passed a bill that would criminalize publication of an agent's name merely, if there was "reason to believe" publication would impair foreign intelligence activities. This is dangerous legislation. It is not at all difficult to see how language of that sweep and looseness could be applied to journalists or others who brought news of American intelligence to light. Journalists regularly publish information that they suspect will have a negative impact. The First Amendment assures them their right to do so.

The Senate Judiciary Committee has since voted out, 9 to 8, a more acceptable bill. It opens namers of names to prosecution only if they acted with an "intent to impair or impede" intelligence activities. Such an intent—the traditional criminal test—would hardly be a part of most journalism. Meanwhile, the administration supports an effort to adopt the House bill on the Senate floor.

Supporters suggest that only the House bill would adequately protect the country's secret agents. But this contention is far overdrawn. Either bill in Congress would supply a legal sanction to move against the Philip Agees, the unprincipled people who have made a practice of blowing the cover of American agents in order to disable the CIA. Even the Reagan Justice Department now accepts that there is no potential Philip Agee beyond the prosecutorial reach of the Senate bill; that legislation is, a department official says, "enforceable and constitutional."

But where the House bill bites deeply into the First Amendment, the bill reported out of Senate Judiciary bites less severely. The House measure targets not only the Philip Agees but, potentially, also legitimate journalists. The Senate Judiciary bill strikes just at the Philip Agees. That is the reason why, of the two, we believe the Senate judiciary bill deserves to be carried on the floor. But we trust that senators will note, at least in passing, that both infringe, to one degree or the other, a constitutional right.

[From the Indianapolis News, Oct. 12, 1981]

SAVING FREEDOM TWO WAYS

The Reagan administration appears to be passing up a good opportunity to take a stand on behalf of freedom of the press and still establish firmer protection for U.S. intelligence operations.

The issue is a law to make it a crime to identify undercover U.S. intelligence agents. The House of Representatives, with the support of the Reagan administration, has approved a sweeping version of legislation to make it illegal to identify agents. The Senate Judiciary Committee, on the other hand, has approved similar legislation, but with a provision designed to protect freedom of the press.

The difference between the two bills appears on an ordinary reading to be a matter of splitting hairs. The House bill would make it a crime for anyone to identify an agent or informer "in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede" foreign intelligence operations. The proposal approved by the Senate Judiciary Committee would make exposure illegal when it is done "with the intent to impair or impede" foreign intelligence activities "by the fact of such identification or exposure."

Sen. Joseph R. Biden Jr., D-Delaware, offered this amended version of the legislation to avoid putting a damper on legitimate investigative reporting. A reporter could be prosecuted, for example, for uncovering and naming a Soviet spy in the CIA or for naming former CIA operatives engaged in narcotics smuggling.

A Reagan Justice Department official, Richard K. Willard, acknowledged before the Senate Judiciary Committee that the House legislation could be used to thwart ordinary news media reporting, but he said it probably would not be used that way in practice.

That's nice. The Reagan administration, we keep hearing, is made up of pretty nice guys who mean no harm to anyone. But the Reagan administration will not be around forever, and a future administration might not see things quite the same way.

Why legislate a potential threat to a basic constitutional principle? The amended version of the bill should serve just as well to prosecute persons such as Philip Agee, a

former Central Intelligence Agency agent, and others who have published lists of agents for the stated intent of hindering intelligence operations.

The Reagan administration has already established a disturbing pattern of efforts to close off the free flow of information required by the Freedom of Information Act. Lining up on the side of the Senate Judiciary Committee version of this bill would offer a chance to reverse that pattern. The Biden amendment also provides a way to protect intelligence agents as well as freedom of the press.

[From the Nevada State Journal, Oct. 5, 1981]

SLAMMING SHUT ANOTHER DOOR

Here they come again, closing public doors faster than the public can turn around to see the doors slam shut.

"They" are our Washington representatives. And what they are closing, steadily, surely, and with increasing speed, is access to government.

In the latest instance, the House rode roughshod over its own Intelligence Committee Sept. 23 and voted to make it a federal crime to disclose the identity of a U.S. intelligence operative even if the operative's name is a matter of public record. And the act would be a crime no matter what the circumstances involved.

The committee had recommended making disclosure a crime only when there was "intent to impair or impede the foreign intelligence activities of the United States." But the House would have none of this, and voted 354 to 56 to install a sudden floor amendment to make disclosure a crime even if the news media were reporting the names of agents engaging in illegal activities, or trampling on citizens' rights.

The penalty: 10 years in prison and a $50,000 fine for past or present government officials, and three years in prison and a $15,000 fine for journalists.

This bill of course arose from a legitimate concern about the safety of agents. Former CIA officer Philip Agee has made a new and despicable career out of exposing agents, endangering their lives, and damaging the overseas operations of the CIA. And publications such as that Covert Action Information Bulletin and Counterspy routinely print the names of overseas CIA agents with the vowed intent of hindering their work. One would be hard pressed to defend any of these activities; and, in fact, few have—while many have quite properly condemned them.

Yet the House of Representatives, in its concern about these revelations, is creating an equal danger. It has declared that public records are not public, that intent is no factor, and that constitutionality does not matter.

For make no mistake about—the House bill's constitutionality is clearly questionable, according to legal scholars and other experts who testified before the committee.

What the floor amendment did was make the disclosure of an identity a crime whenever the government has reason to believe it might impair or impede foreign intelligence activities. This makes the government the accuser, the witness and the judge; i.e., it places the government in the role of dictator, able to conceal its own mistake as well as disclosure of agents, without let or hindrance.

But there is more: Rep. Ted Weiss, D-N.Y., complained that this bill "presents an incursion on the First Amendment unparalleled in the history of the nation during peacetime. Never has the publicaton of information in the public domain by private citizens been made an offense."

In all intellectual modesty, one must ask how "secret" agents whose names are already in the public domain are endangered by the publication of their names. Certainly the "enemy," whomever that might be at a given time, would already have ferreted out this information. Under this bill as it stands, it really seems that it is the bureaucracy which is the main object of protection, rather than CIA agents. And it is the public which is most injured.

The Senate Judiciary Committee is scheduled to vote tomorrow and Nevadans should object vigorously to the bill in its present form. Time is short, but the bill can be defeated even now, if the public shows it knows the dangers created by the bill.

Let us protect overseas agents indefinitely. But let us do so through constitutional means which protect our control of government as well as the agents.

[From the Richmond Times Dispatch, Oct. 15, 1981]

PROTECTING U.S. SPIES

Philip Agee, a former CIA agent, indulged in the despicable practice of publishing the names of U.S. intelligence agents abroad in an effort to destroy their effectiveness. In the process, he gravely endangered the lives of these persons.

A law is needed to enable the government to move forcefully against anyone who intentionally puts our secret agents in jeopardy by revealing their identities. Congress is in the process of enacting such legislation.

The House of Representatives passed a bill designed to achieve that goal, but many people worry that while the bill's intent is laudable, its wording runs afoul of the First Amendment's protection of free speech. the bill would make it a crime for anyone to publish such names if he had "reason to believe" it could endanger the persons named. The fear is that a newspaper or broadcasting station or an individual writer might effectively be prevented from making public information about government corruption involving an intelligence agent if a government representative warned in advance that the publication could damage the agent.

So the Senate Judiciary Committee has voted 9-to-8 to narrow the bill to the extent that a person could be prosecuted for revealing agents' names only if he acted with specific "intent to impair or impede" the nation's intelligence activities. There was not the slightest doubt that Philip Agee acted from such a motive.

It is not easy to draft a bill that attains the proper balance between protecting agents' identities, on the one hand, and First Amendment rights, on the other. The most effective protection of the agents might be provided by making it illegal to publish their names under any conditions, but that would do violence to the principle of free speech, since there could be unusual situations in which such publication would be justified in the overall national interest.

The Senate committee amendment appears to represent a reasonable effort to strike the proper balance.

[From the Louisville Times, Oct. 21, 1981]

BAD BILL, BETTER BILL—SENATE SHOULD REJECT HOUSE CIA MEASURE

If there's a lesson to be learned from the government's lethargic reaction to the disclosure that former CIA agents helped Libyan terrorists, it's that public scrutiny of the intelligence agency is more necessary than ever.

Yet the House of Representatives, urged on by the Reagan administration, has passed a bill that could severely penalize newsmen and other researchers who disclose names of spies when reporting on intelligence activities.

Senators Huddleston and Ford can help head off this ill-conceived measure by backing a much tighter Senate version, which could come to the floor as early as this week. Mr. Huddleston has a special interest since he helped draft a charter designed to keep the CIA within constitutional bounds.

Both bills have the worthy goal of protecting undercover agents stationed abroad. On two occasions, CIA employees were attacked after anti-agency zealots disclosed their identities.

The trouble is that reporters and scholars and, for that matter, all private citizens, could be fined and jailed even if they "reveal" names gleaned from unclassified sources.

One result, whether intended or not, would be to discourage legitimate, necessary discussion of CIA failures, blunders and abuses, of which there have been plenty. Under the House bill, a prosecutor would only have to prove a reporter had "reason to believe" his investigation would impair or impede intelligence activities. Well documented stories often "impair or impede" misguided government programs.

Defenders of this approach argue lamely that newsmen and other citizens could report intelligence misdeeds to Congress, the CIA director or the Justice Department. These, of course, are the same folks who have been less than eager watchdogs in the past.

Or, goes the argument, critical material could be published without the names of wayward agents. In many cases, however, such self-restraint would simply contribute to a cover-up.

The Senate Judiciary Committee has come up with a better bill, and the Kentucky senators should join those who hope to fend off amendments. Under the Senate version, a citizen could be successfully prosecuted only if he disclosed names with malicious intent to disrupt intelligence work. That language could not easily be stretched to cover legitimate reporting.

President Reagan has given the senators another excellent reason to resist changes in their bill. He is considering a plan to allow the CIA to spy on American citizens, open mail, infiltrate legal groups and all the rest. This is not the time, in short, to relax surveillance of the intelligence community.

Mr. McCLORY. Mr. Speaker, I yield 4 minutes to the gentleman from Illinois (Mr. HYDE.)

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, as ranking minority member of the Civil and Constitutional Rights Subcommittee of the House Judiciary Committee, I have been a consistent and strong supporter of legislation to make it a Federal offense to disclose the identities of covert intelligence agents under certain egregious circumstances, It was therefore with great regret that I chose not to sign the conference report on H.R. 4. Although the bill itself is deserving of high praise, and I strongly urge my colleagues to vote in favor of it, the statement of managers which purports to interpret the bill contains so many contradictions and inaccuracies about the clear language in the bill that the courts would do well to ignore it.

Mr. Speaker, when the House Judiciary Committee favorably reported the predecessor of this bill by an overwhelming margin in 1980, I described it as "our response to the erosion of our intelligence facilities and services in a very dangerous world." That erosion has continued unabated and the danger has increased proportionally. I am therefore relieved that, at long last, we are prepared to send a bill to the President for his signature. The conference report which we have under consideration comports with the dictates of the first amendment to our Constitution. In addition, if interpreted correctly, it will serve as a highly effective deterrent to the unconscionable and dangerous revelations that it has been our misfortune to witness in recent years.

Mr. Speaker, let me describe what we did in crafting this legislation and, even more emphatically, what we did not do. While the first amendment is not absolute, and thus permits us to place some restrictions on speech to safeguard our national security interests as well as certain other restrictions, it does impose a strict duty to use the least restrictive means possible to address the evil that we have identified. This was a relatively simple task with respect to persons who have been given authorized access to classified information and a corollary responsibility not to disclose that information. With respect to others, the job was more difficult, but I believe this legislation passes the constitutional test with flying colors.

We have required that any disclosure be made "in the course of a pattern of activities intended to identify and expose covert agents." We have further required that those activities be engaged in with reason to believe that they would impair or impede the United States foreign intelligence activities. Finally, we have required that the disclosure be made with the knowledge that a covert relationship is being disclosed and that the Government is taking affirmative measures to conceal the classified relationship involved. Mr. Speaker, the multifaceted state of mind, which the prosecution will be required to prove beyond a reasonable doubt, limits the applicability of the offense to those whose activities pose the greatest danger to the national security and the safety of our intelligence officers.

It is with respect to this carefully constructed state of mind, Mr. Speaker, that I must part company with the letter and spirit of much of the statement of managers accompanying this conference report. The clear import of most of that statement is that an additional motive or a certain status may negate the criminal state of mind we have outlined. This is a premise I firmly reject.

In one instance, the statement of managers correctly notes that "the fact that a defendant claims one or more intents additional to the intent to identify and expose does not absolve him from guilt." This means, Mr. Speaker, that, so long as the defendant possessed this requisite intent, his additional intents are not exculpatory. Remarkably, and unfortunately, the bulk of the statement of managers suggests just the contrary: that certain beneficient motives would necessarily negate the intent to identify and expose covert agents.

Mr. Speaker, I cannot envision a case, no matter how heinous, where the defendant will fail to assert a paramount goal to justify his action—some "redeeming social value." Even the perpetrators of the "Naming Names" publications profess another intent; namely, the frustration of certain activities by our intelligence personnel. This body, and the various committees involved, never intended that the criminality of conduct would be dependent upon whether the Government approved of the defendant's higher motives, because that would be offensive to our precious first amendment. We concentrated instead on the intent to engage in a certain type of conduct—identification and exposure of agents—that is unquestionably dangerous.

Mr. Speaker, in constructing this bill over the course of two Congresses, we diligently followed the dictates of the first amendment. To that end, we identified a certain limited course of conduct that was a threat to our agents and national security and made it illegal. We identified not only an activity, but a state of mind, that occurring together, comprised the conduct that we wanted to prevent. Any additional intent was something that we chose not to judge, because the damage that is done is the same, irrespective of the good intentions of the person doing that damage.

Mr. Speaker, I commend the chairmen and ranking minority members of the full Intelligence Committee and the subcommittee for their diligent efforts in drafting H.R. 4 and in moving it through this Congress. I believe that it is a constitutional and effective response to the dangerous problem posed by the callous revelation of the identities of our covert intelligence agents. I urge my colleagues to vote in favor of the conference report, but, at the same time, I urge the courts to consign the statement of managers to the oblivion it deserves, and take solace at the fact that the clear language of this legislation requires no obfuscatory interpretation as proffered by the manager's statement.

We often ask our covert agents—and their sources of intelligence—to risk their lives in the national interest. The very least we can do is protect their identities from assassins and terrorists.

□ 1330

Mr. BOLAND. Mr. Speaker, the gentleman is always persuasive and always charming, and as a constitutional lawyer I would say he is one of the best in this body. I appreciate very much the remarks of the gentleman from Illinois.

Any Member of this body, of course, is entitled to his own opinion. However, let me just emphasize that the statement of the managers accompanying the conference report is the authoritative statement as the intent of the conferees and the meaning of the statute. I am sure the courts will have some fun looking at some of the proceedings of this House today, and I am sure, in looking at the specific language of the bill itself, which of course is controlling, but where the bill itself lacks some clarity as it does, and where no particular definition was given either in the House or in the Senate vis-a-vis the "reason to believe," then I think there has to be some clear legislative interpretation of it, perhaps a little authoritative legislative history. We have tried to do that in the statement of managers, and hopefully the courts will appreciate that effort, since it is the official explanation provided to, and adopted by, each House.

Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. WEISS).

(Mr. WEISS asked and was given permission to revise and extend his remarks.)

Mr. WEISS. Mr. Speaker, I pity the poor courts after listening to the colloquy today. If we are confused to here, and those who participated in drawing up both the conference report and the statement of the managers are confused as to exactly what the import of this legislation is—and this just happened recently and the Members are all here—I can imagine what the courts will do with this.

I assume that when the gentleman from Illinois denied that the interpretations that are set forth by the managers are not accurate, he was referring to some of those interpretations which appear on page 10 of the conference report, where it says:

An effort by a newspaper intended to uncover CIA connections with it, including learning the names of its employees who worked for the CIA.

Or—

An effort by a university or a church to learn if any of its employees had worked for the CIA. These are activities intended to enforce the internal rules of the organization and not identify and expose CIA agents.

I assume the gentleman from Illinois interprets that as being one of those double intents, and only one intent is really the one that matters:

An investigation by a newspaper of possible CIA connections with the Watergate burglaries. This would be an activity undertaken to learn about the connections with the burglaries and not to identify and expose CIA agents.

I want to credit the gentleman from Massachusetts, the chairman of the committee, Mr. Speaker. I think that

he has tried to do a yeoman job under very impossible circumstances. I think that he came as close as possible without really being able to achieve the impossible. Because of that, I wish he had stuck with his original conclusion, which was that indeed, the legislation, because of reasons given by the gentleman from California, in fact is unconstitutional.

I recall that when the House Subcommittee on Government Information and Individual Rights of the Government Operations Committee held hearings last year, we had columnist Jack Anderson before us. He referred back to that awful tragedy where the head of mission in Greece, the CIA head of mission, had been assassinated. He pointed out that it was not that the man's name had appeared in one of these awful publications which are in the business of disclosing the names of CIA agents, but that the CIA had an unbroken habit of some 30 years of placing its head of mission, no matter what the cover was, in that particular residence; and that Greek guides would take tourists through the town and point out where the head of the CIA mission was residing.

So, it seems to me that what we are trying to do in a very unconstitutional manner in this piece of legislation probably cannot be done effectively, and we would be better off probably in trying to get the CIA to straighten out its act so that it does not subject its people possible harm and loss of life.

Mr. McCLORY. Mr. Speaker, I yield 3 minutes to the gentleman from Florida (Mr. YOUNG).

Mr. YOUNG of Florida. Mr. Speaker, I rise in support of H.R. 4 and the conference report to come become the House. I am sorry that our colleague, John Ashbrook, is not here today, because I know he would rightfully be proud of this product. John was a leader in arriving at the point we are at today, and he was dedicated to the protection that we are about to provide for those who serve us in our intelligence community. I know John also would share the comments that I make now about our distinguished chairman. I know of John's sincere feeling of respect and admiration for EDDIE BOLAND and our ranking minority member, KEN ROBINSON and I certainly share that.

John and I worked together on a lot of items, important matters, before the Select Committee on Intelligence, I think much to the chagrin of our chairman on occasion, but he always understood what we were about, and certainly treated us with total fairness.

He has taught me a lot, and he just now taught me something else when he was talking about the debate we have here today establishing the legislative history on this legislation. I was not going to make this comment, but I think as we do establish legislative history, that maybe I had better.

There is some controversy about the statement of the managers which accompanies H.R. 4. I just have to say, Mr. Speaker, I do not really consider this a statement on the part of the managers because most of the managers that I know of had nothing to do with its preparation. This is not a conference product. The conference committee did not meet on the subject of the statement of the managers. It was a foregone decision presented to at least some of us only when we were asked to sign it, and so as we are establishing legislative history, I do not think we ought to take this statement as a conference product or as being approved by the conference committee, for it was not. The conference committee did not even meet on the subject.

Now it is important that we proceed despite this confusion and despite the disagreement on the statement of the managers. It is important that we proceed and enact this legislation. It is late; it is far past due. We should have had it years ago as we began to rebuild our intelligence capability in the United States, a capability so necessary to our overall security. And it is important that we protect those people who work in intelligence, who are basically responsible for being our eyes and our ears in a world that is somewhat hostile. It is extremely important if we are going to have an adequate national defense.

I rise in strong support of this bill, and I hope the House will pass it with an overwhelming vote and establish that as legislative history, that it is the intent of the Congress of the United States to provide for a strong national defense and to recognize that a strong intelligence capability is a part of that strong national defense, and the protection of the people who work in it on a daily basis, the protection of their lives and the protection of their involvement in our national defense is also essential.

Mr. McCLORY. Mr. Speaker, I yield such time as he may require to the gentleman from Illinois (Mr. HYDE) for the purpose of a colloquy.

Mr. HYDE. Mr. Speaker, I thank my colleague from Illinois.

Although we are both strong supporters of H.R. 4 and urge the adoption of this conference report, I understand that the gentleman from Illinois (Mr. MCCLORY) shares some of the concerns I have expressed about the statement of managers. As ranking minority member of the Intelligence Subcommittee on Legislation and of the full Judiciary Committee, he was "present at the creation" of this important legislation and throughout its long journey through this and the last Congress. He is thus thoroughly familiar with the legislative intent behind H.R. 4. I would like to solicit his reaction to some of the assertions made in the statement of managers.

Mr. McCLORY. Mr Speaker, if the gentleman will yield, I am glad to discuss our mutual concerns with the gentleman from Illinois (Mr. HYDE). As the ranking minority member of the Subcommittee on Civil and Constitutional Rights, you have been a strong ally of our covert agents and the national security interests that they serve. Your expertise has proved invaluable in the delicate area of first amendment concerns that have arisen in connection with this bill.

Mr. HYDE. I thank the gentleman for his kind words. As the gentleman knows, the language in section 601(c) of the bill was carefully crafted with those first amendment concerns constantly in mind. As the gentleman and I have discussed, in the national security area, the first amendment demands that we carefully define a problem and address it with the least restrictive means possible. However, it has never been my understanding that the first amendment requires us to interpret legislation in such a way as to endanger its effectiveness.

□ 1345

Mr. McCLORY. The gentleman from Illinois is entirely correct. Section 601(c) of the bill requires the Government to prove beyond a reasonable doubt various elements of the offense, including the fact that the disclosure was made in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair our foreign intelligence activities. This element alone will pose great demands on the Government in terms of proof which will be met only in the most egregious cases.

Mr. HYDE. I agree with the gentleman that the burden on the Government is a great one, as it should be when we are dealing with first amendment concerns. However, the statement of managers suggests that the prosecution may encounter certain problems in proving those elements which are clearly spelled out in the language of the act. It seems to suggest that the fact that the defendant had an additional, but beneficient, intent in making a disclosure could place him beyond the reach of this law. Furthermore, it implies that the status of the defendant—as a newspaper reporter, academician, or private organization—might be exculpatory. For instance, on page 8, it states that section 601(c) "does not affect the first amendment rights of those who dislose the identities of agents as an integral part of another enterprise such as news media reporting of intelligence failures or abuses, academic studies of the U.S. Government's policies and programs, or a private organization's enforcement of its internal rules." Is it the gentleman's understanding, based on his lengthy involvement in the development of this legislation, that an individual's additional intent or his status in connection with a given enterprise will place him beyond the reach of section 601(c), if he has en-

gaged in the requisite pattern of activities intended to identify and expose covert agents?

Mr. McCLORY. It certainly is not. While the gentleman is correct that the statement of managers may imply such an interpretation, the language that you have quoted contradicts other language in the statement that reflects our true intent. I refer the gentleman to page 9 of the statement, wherein the managers state without qualification:

Of course, the fact that a defendant claims one or more intents additional to the intent to identify and expose does not absolve him from guilt. It is only necessary that the prosecution prove the requisite intent to identify and expose covert agents.

On page 10, the statement notes that a defendant may rebut the Government's proof of an intent to identify and expose by demonstrating "some alternative intent." I would call the gentleman's attention to the use of the word "alternative," rather than "additional" here. The intent shown must be to the exclusion of an intent to identify and expose, not in addition to that intent.

I think my colleague from Illinois and I would agree that the two statements that I have quoted accurately represent our legislative intent in drafting this provision. The contradictory passages to which he referred do not accurately reflect that intent.

Mr. HYDE. I thank the gentleman for his explanation, with which I am in total accord. Is it correct to conclude from the gentleman's remarks that the illustrations which appear on page 10 of the statement are somewhat misleading as to our legislative intent to the extent that they are based on the general principle that we have repudiated—namely, that an additional intent can be exculpatory?

Mr. McCLORY. The gentleman is again correct. The danger in the premise the gentleman has identified is that many defendants—even those in the business of "naming names"—could probably point to an additional intent. The statement of managers acknowledges this fact on page 7 and notes that such motives are irrelevant to the protection of our national security interests. Unfortunately, that sentiment was not consistently reflected throughout the statement.

Mr. HYDE. I wonder if I might solicit the gentleman's learned opinion on another suggestion in the statement of managers which has troubled me. With respect to the definition of "covert agent," the statement on page 11 observes that the definition is crafted to insure that,

As it applies to those who are not undercover intelligence agency employees, [it] does not include those private citizens who might provide information to the CIA or FBI, but whose public identification, though causing personal embarrassment, would not damage the national security.

Is it the gentleman's understanding that the intelligence relationship of these private citizens to the United States would be covered under the bill so long as that relationship is classified and that person is serving, or has served, as an informant or source of operational assistance?

Mr. McCLORY. The gentleman is again correct. There was never any intent to exclude so-called private citizens from the protection of this act so long as they fulfilled all of the requirements of the definition and the other requirements of the bill were met.

Mr. HYDE. Mr. Speaker, I thank the gentleman from Illinois (Mr. McCLORY).

Mr. BOLAND. Mr. Speaker, may I inquire as to how much time remains on either side?

The SPEAKER pro tempore (Mr. WALGREN). The Chair will state that the gentleman from Massachusetts (Mr. BOLAND) has 3 minutes remaining and the gentleman from Illinois (Mr. McCLORY) has 7 minutes remaining.

Mr. BOLAND. Mr. Speaker, I yield 1 minute to the gentleman from Kentucky (Mr. MAZZOLI).

Mr. MAZZOLI. Mr. Speaker, I take this time to pay tribute to one Member in the Chamber, the gentleman from Florida (Mr. BENNETT), who played a very strong role in the early formation of the legislation we are dealing with today to protect the agents, and those people who work undercover for the United States.

Also, I think it would be wrong not to make mention of the fact of the strong support given this bill from start to finish by the majority leader, the gentleman from Texas (Mr. WRIGHT), and the minority leader, the gentleman from Illinois (Mr. MICHEL), both of whom came before our committee and both of whom urged the adoption of bills like this, and both of them, of course, cleared this matter for early floor consideration.

I just wanted, Mr. Speaker, to pay tribute to those Members and the many, many others who played strong and particularly pivotal roles in this legislation.

If I have any part of my 1 minute remaining, I thank the gentleman from Illinois (Mr. McCLORY) and the gentleman from Illinois (Mr. HYDE) for that colloquy in which they engaged. There is a clear need to be sure that we are putting this bill in a position to drive a wooden stake into the hearts of those people who practice the nefarious trade of identifying Americans who are trying to do the job of protecting this country. This bill does that, as the statement of managers very clearly sets forth. I thank the gentlemen for their explanation, but as the chairman has just indicated, the authoritative statement as to the intent of the conferees and the meaning of the conference report we are about to adopt is the statement of managers.

Mr. McCLORY. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, I think that the clear intent of this legislation is going to be discerned by any court that has an opportunity to intepret it. I also think that it is perfectly clear that any statements made here or at any other point in the legislative history which are inconsistent with the plain language of the bill are going to be disregarded.

At this point, Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. SOLOMON).

Mr. SOLOMON. Mr. Speaker, I am pleased the Congress is finally approving legislation establishing criminal penalties for the disclosure of information identifying American intelligence agents. However I am very disappointed the conference disapproved the provision of the bill to include former intelligence agents.

As you recall, this amendment, which I offered in the House, was overwhelmingly supported in the House with over 300 votes in the affirmative.

By protecting former agents my amendment strengthened H.R. 4 in several ways:

First. It would protect former agents from possible harm as a result of the disclosure of their true identities;

Second. It would protect active operatives who may have assumed the former agent's position overseas; and

Third. It would protect the entire intelligence network which may have been passed on to the former agent's successor.

Mr. Speaker, after the President signs the Intelligence Identities Protection Act (H.R. 4) into law, I will be introducing legislation to reinstate this important provision of the act. At that time, I will be requesting the 313 Members of the House who approved the original amendment, to expand the law to cover former agents, to join me in sponsoring the legislation.

Mr. Speaker, on a related matter, I would like to express my grave concern over the subject of American scientific information being transfered to the Soviet Union. I am placing in the CONGRESSIONAL RECORD a speech made by a person who is a friend and one of our country's greatest intelligence officers, Admiral Inman. Admiral Inman's comments on the transfer of scientific information are of vital importance to the security of our country.

Mr. MAZZOLI. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I am glad to yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Speaker, I thank the gentleman for yielding, and I very much appreciate his constructive attitude about the bill today. I know that the gentleman was successful in the House in having the Solomon amendment adopted. The gentleman from Kentucky, with respect, opposed it, but obviously it carried the day in the House.

I thank the gentleman for recognizing the need to move forward with the essential elements here, which are to

protect the people who do serve this Nation in many very dangerous and precarious positions, and if I remain chairman of the subcommittee in the next Congress, the gentleman's bill will be given a full and fair hearing and an opportunity to become the law of the land.

Mr. SOLOMON. Mr. Speaker, I thank the gentleman from Kentucky (Mr. MAZZOLI), for his remarks, and I would also like to commend the gentleman from Massachusetts, the gentleman from Illinois, and all the members of the select committee for the excellent work they have done.

Although I am not completely satisfied, this does put some teeth back into our counterintelligence agency operations and the gentleman is to be commended. I am sure that if John Ashbrook were here, he would be extending those same commendations to all of you.

Mr. Speaker, I will be asking for a vote on this legislation because I think it is extremely important that we show overwhelmingly favorable recorded support for this legislation in the future.

Mr. McCLORY. Mr. Speaker, I yield myself such additional time as I may consume.

Mr. Speaker, I have had occasion in the course of my experience to confer individually with intelligence agents, including intelligence agents who serve our country overseas undercover, and I can assure the Members of the House that they regard this legislation as vital to their own survival and to their own service in behalf of our Nation.

There is no legislation which will come before this Congress which in my view can do more to help enhance our own national security because, indeed, the work of our intelligence agents do assure our national security as completely and as thoroughly, and sometimes in a better way, than do our Armed Forces.

So I think we can be very proud of supporting this legislation and recognize that we are performing an act in behalf of our own survival as a nation.

Mr. Speaker, I want to commend the leadership for scheduling this measure. I commend my chairman, the gentleman from Massachusetts (Mr. BOLAND), for his active support of the measure, and, as he indicated, the leadership on both sides of the aisle in recognizing the importance of this measure that is before us. Indeed, it was the distinguished Republican leader, my colleague from Illinois (Mr. MICHEL), who introduced the original agents' identities bill some 6 years ago, and I applaud my colleagues on the other side of the aisle for recognizing its merit.

Mr. Speaker, I strongly urge adoption of the conference report by the House.

Mr. BOLAND. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as the statement of managers indicates, neither House, in adopting the crucial reason-to-believe standard, "intended to change the scope of conduct which this act seeks to proscribe. Rather, the change was made to deal with elements of proof at trial." The statement does not change the bill. It explains what has been said about it for years.

The bill proscribes the so-called naming of names, which is a phenomenon involving the systematic exposure of U.S. intelligence officers in wholesale fashion. The statement makes the point that this is what the Congress has always sought to criminalize.

The statement also makes a point of what the bill does not proscribe; that is, regular or even "irregular" journalism. Reporting which includes the identities of undercover operatives is not covered unless it meets the requirements of the bill; that is, unless it rises to the level of a "pattern of activities intended to identify and expose" such undercover operatives.

If prosecutors and judges pay attention to the statement, there likely will be very few prosecutions, but those that do take place should result in the vindication of H.R. 4 as constitutional and effective.

● Mr. BROOMFIELD. Mr. Speaker, it was approximately 6½ years ago that I cosponsored the first version of the measure now before us. That original proposal was initiated by our distinguished minority leader, Mr. MICHEL, and was triggered by the December 23, 1975, assassination of Richard Welch, the then-CIA Station Chief in Athens, Greece, whose cover was blown in Counter Spy magazine.

Since the Welch tragedy, a number of other U.S. intelligence officers have had their identities disclosed, and their lives jeopardized by those who are bent on destroying our intelligence capabilities abroad. Leaping to mind in this connection are the episodes in Jamaica in July 1981. Specifically, I am referring to the attacks upon the homes of our Embassy's first secretary and an AID employee shortly after each was said to have CIA ties at a press conference held by the American editor of Covert Action Information Bulletin.

What effect do you think these disclosures have on our sources overseas? Put yourself, for a moment, in the shoes of an individual who discovers one morning that the CIA case officer with whom he has been seen and to whom he has been passing valuable intelligence information for years has just had his cover blown by the likes of Philip Agee. I do not think many of us in Congress realize what the potential consequences are to a source who finds himself or herself in that kind of a situation. If we did, I do not think we would have taken so long to approve this legislation.

Not only have these disclosures cost us existing sources, but it has also caused many "would be" sources to forego association with the CIA. Can you blame them? Given the CIA's inability to protect the identities of its own employees, how can one assume that it can guarantee the confidentiality of a "would be" informant?

Over the past year, much has been said and written about the first amendment questions of this bill. Those in the journalistic profession have expressed special concern. I want to assure my journalistic friends that those of us backing this remedial legislation are very sensitive to those concerns and believe they have been taken into full account.

In this regard, however, one must bear in mind that there are instances when discretion must be exercised as to what one says. This point was made by Richard K. Willard, who has served as a counsel for intelligence policy to the Attorney General. Responding to media criticism about this bill, Willard observed in a compelling article appearing in the November 17, 1981, edition of the Washington Post that:

> The Supreme Court has long held that the first amendment does not absolutely protect statements whose "very utterance inflicts injury" (*Chaplinsky* v. *New Hampshire*). We are all familiar with Justice Holmes' observation that "falsely shouting fire in a theater and causing a panic" is not protected by the Constitution.
>
> In the recent case of *Haig* v. *Agee*, the Supreme Court rejected the first amendment claims of ex-CIA agent Philip Agee, whose passport was revoked in part because of "his repeated disclosures of intelligence operations and the names of intelligence personnel." The Court concluded that such disclosures "are clearly not protected by the Constitution." In summary, the first amendment does not preclude legislation that prohibits the systematic exposure of agents' identities under circumstances that pose a clear threat to intelligence activities vital to the Nation's defense.

Mr. Speaker, I spoke at length on the merits of this measure when we favorably acted upon it last fall. Therefore, I will be brief today and sum up by saying that this long overdue legislation represents a careful balancing of our national security and civil liberties concerns and consequently warrants immediate adoption. As I stated on the House floor nearly 9 months ago, it is the least we can do for those who literally put their lives on the line for us.●

● Mr. HAMILTON. Mr. Speaker, I rise in support of the conference report on H.R. 4, which will prohibit the unauthorized disclosure of information identifying certain U.S. officers, agents, and sources whose identities have been properly classified.

Disclosure of the names of agents may take many forms:

From the disgruntled former CIA officer who decides to turn on his fellow workers, to the respected reporter who may identify an agent incidentally in the course of a legitimate exposé on newspaper reporters working covertly for the CIA.

In this bill, H.R. 4, we are not proposing that every individual revealing an agent's identity under any circumstances be subject to criminal penalties. Such an across-the-board prohibition would have a chilling effect on free speech and would no doubt be unconstitutional.

Rather, we are restricting the legislation only to three types of unauthorized disclosure:

First, disclosure by Government officials and others entrusted with access to classified information that identifies covert agents;

Second, disclosure by those with access to classified information that allows them to discern such identities; and

Third, disclosure by those without access to classified information "in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe such activities of the United States"; that is, those in the business of ferreting out and naming names.

The bill does not apply to casual discussion, political debates, legitimate journalism, and the like.

The statement of managers accompanying the conference report is very important in understanding the reach of this third category and bears emphasizing. The statement notes, in regard to "pattern of activities" that:

In order to fit within the definition of "pattern of activities," a discloser must be in the business, or have made it his practice, to ferret out and then expose undercover officers or agents where the reasonably foreseeable result would be to damage an intelligence agency's effectiveness. Those who republish previous disclosures and critics of U.S. intelligence would all stand beyond the reach of the law if they did not engage in a pattern of activities intended to identify and expose covert agents.

A journalist writing stories about the CIA would not be engaged in the requisite "pattern of activities" even if the stories he wrote included the names of one or more covert agents, unless the Government proved that there was an intent to identify and expose agents. To meet the standard of the bill, a discloser must be engaged in a purposeful enterprise of revealing identities—he must, in short, be in the business of "naming names."

As to the meaning of "reason to believe," the explanation of the conferees states:

The "reason to believe" standard is met when the surrounding facts and circumstances would lead a reasonable person to believe that the pattern of activities would impair or impede the foreign intelligence activities of the United States. A government warning to a news reporter that a particular intended disclosure would impair or impede foreign intelligence activities could be considered by the jury, but the ultimate question for the jury would be whether the government had demonstrated that a reasonable person would believe that the pattern of activities in which he had engaged would impair or impede the foreign intelligence activities of the United States. Thus what would be relevant would be the objective facts about likely harm. Among the objective facts to be weighed by the jury in determining what a reasonable person would believe would certainly be the ease with which the name of a covert agent was identified and the extent to which it was widely and publicly known.

Today we will hear criticism on both sides: Some may argue that we have drawn the language too tight; others that we have not drawn the language tight enough. I believe that we have carefully weighed the alternatives and that we have arrived at a proposal that strikes a reasonable balance:

We have drafted language that makes illegal disclosure by those entrusted or by those in the business of naming names, and we have carefully avoided being overzealous and possibly ensnaring unintentionally those we do not wish to catch, that is, legitimate journalists or whistleblowers.

Mr. Chairman, I urge the adoption of the conference report on H.R. 4.●

● Mr. DERWINSKI. Mr. Speaker, in January 1976, my distinguished colleague from Illinois, BOB MICHEL, introduced an intelligence identities protection bill, which I cosponsored. That bill was offered in the immediate aftermath of the tragic murder in Athens of Richard Welch, CIA chief of station. Welch had earlier been named as an intelligence officer by a publication produced here in the United States.

The particular publication that named Welch, Counter Spy, predecessor of Covert Action Information Bulletin, was published by, among others, Philip Agee, a former officer of the CIA, who after leaving the Agency described himself as a "revolutionary Communist" and undertook a career of exposing American intelligence personnel and hindering the work of the U.S. intelligence services.

A terrorist group in Greece actually did the killing of Welch but the publishers of Covert Action Information Bulletin expressed no sorrow. Agee's colleagues in Covert Action actually claimed, in referring to Welch, it "was his career * * * his job;" that caused his death. They were not the least bit remorseful.

Agee and his colleagues have since named thousands as intelligence employees. In addition to publishing their magazine, they have visited foreign countries and with considerable publicity have identified CIA station personnel. Local media have then often repeated the information. Attacks have been carried on U.S. employees and their families after these accusations. They and their dependents, of course, fear for their lives.

Key sources are obviously more reluctant to talk to U.S. Government officials after their public exposure. The jobs of American officials become more difficult and the effectiveness of American efforts overseas is reduced. The cost of U.S. Government operations abroad is greater after these malicious attacks.

American officials sent overseas by their Government to carry our functions approved by the President, the Congress, and the American people, should not be subjected to these hazards. They should not be exposed by fellow Americans without some protection in U.S. law. Finally, large majorities of both Houses have given us this intelligence identities protection bill. The President has assured us that he will sign it. It took a long time since Richard Welch was killed in Athens but finally we have a law that will make it a crime to finger an American intelligence employee, an action from which many complications flow, including the loss of life.●

Mr. BOLAND. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SOLOMON. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this question will be postponed.

□ 1400

GENERAL LEAVE

Mr. BOLAND. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report just under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

THE CARIBBEAN INITIATIVE: HOW TO EXPORT U.S. JOBS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. GAYDOS), is recognized for 60 minutes.

● Mr. GAYDOS. Mr. Speaker, committees of the House now are considering the administration's Caribbean Basin Initiative, which really is a proposal to ship out an unknown number of American jobs in the guise of economic aid.

This initiative condenses into one proposal all the misconceived efforts of the past 40 years to pull the world up by the bootstraps of U.S. workers, and it would replicate and increase the generosity that has given away whole industries.

Furthermore, it would make the Caribbean nations into fronts and staging areas for further and easier destruction of the U.S. economy by those who already wage trade war on us in steel and other goods.

Leaders of the steel caucus have testified on this initiative before a subcommittee of the Committeee on Ap-